

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen;

Plaintiff,

vs.

HAWAIIAN EXPRESS SERVICE,  
INC., et al.,

Defendants.

) CIVIL NO. CV03-00385 SOM-LEK

) (Copyright)

)

) **DECLARATION OF DAMIAN D.**

) **CAPOZZOLA IN SUPPORT OF**

) **PCT'S OPPOSITION TO**

) **PLAINTIFF WAYNE BERRY'S**

) **MOTION IN LIMINE TO EXCLUDE**

) **EVIDENCE OF ANY TESTIMONY**

) **OF MARTIN WALKER (Plaintiff No.**

) **2)**

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Hearing: February 24, 2006, 2:00 pm

Judge: Hon. Susan Oki Mollway


Trial Date: February 28, 2006

**DECLARATION OF DAMIAN D. CAPOZZOLA**

I, DAMIAN D. CAPOZZOLA, declare that:

1. I am an attorney at the law firm of KIRKLAND & ELLIS, LLP, attorneys for Defendant PCT, and I am duly authorized to make this affidavit.
2. I am licensed to practice law in the State of California (SBN 186412) and have been admitted pro hac vice in this case. I know the following to be true through my work in this case. If called upon to do so I could and would competently testify as follows.
3. On or about March 21, 2005 I caused the letter and CD pictured in Hogan Decl. Ex. 5 to be sent to Dr. Martin Walker. The CD and the printout of documents contained Berry's copyright submission, which he had previously filed in court in litigation against Fleming. The CD contained a "pdf" version of the printout, meaning it contained "pictures" of the pages, and did not contain an electronic version of Berry's software in the sense of being an Access database or any sort of file that could be edited.

So sworn under penalty of perjury under the laws of the United States of America in Honolulu, Hawaii on February 23, 2006.

  
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Damian D. Capozzola